

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  IOWA BROADBAND INITIATIVE	DOCKET NO. RMU-03-9
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**ORDER ADOPTING RULE**

(Issued January 2, 2004)

Pursuant to the authority of Iowa Code §§ 17A.4 and 476.2 and 2003 Iowa Acts, Senate File 368, Section 6, the Utilities Board (Board) adopts the rule attached hereto and incorporated by reference. These rules add new chapter 199 IAC 43(476) to implement a new statute, 2003 Iowa Acts, Senate File 368, which became effective on July 1, 2003.

**IT IS THEREFORE ORDERED:**

The rule attached hereto and incorporated by this reference, identified as Docket No. RMU-03-9 is adopted.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 2<sup>nd</sup> day of January, 2004.

## **UTILITIES DIVISION [199]**

### **Adopted and Filed**

Pursuant to Iowa Code sections 17A.4 and 476.2 and 2003 Iowa Acts, Senate File 368 section 6, the Utilities Board (Board) gives notice that on January 2, 2004, the Board issued an order in Docket No. RMU-03-9, Iowa Broadband Initiative, "Order Adopting Rules," by which the Board adopted rules relating to the availability of advanced telecommunications services throughout Iowa.

These rules are intended to implement a new statute, 2003 Iowa Acts, Senate File 368, which became effective on July 1, 2003. Entitled "Iowa Broadband Initiative," the statute allows rate-regulated local exchange carriers to implement an increase in monthly rates for residential or business lines. The increase cannot exceed two dollars per month per line. The revenue from this increase is to be used to provide advanced telecommunications services in areas where advanced telecommunications services are not currently available at affordable rates.

A rate-regulated local exchange carrier electing to participate in the broadband initiative must file a proposed plan with the Board for the use of the revenue resulting from the price increase. The statute gives the Board the authority to adopt rules to implement its review process, including rules that specify the initial plan filing requirements, further define the public interest, and identify some of the factors the Board will consider in reviewing the proposed plans.

Notice of Intended Action for the proposed rule making was published in the IAB Vol. XXVI, No. 2 (7/23/03) p. 115, as ARC 2620B. Written comments were filed on or before October 3, 2003, and a public hearing to receive oral comments was held on October 22, 2003.

Written comments were filed by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), Qwest Corporation (Qwest), Rural Iowa Independent Telephone Association (RIITA), and the Consumer Advocate Division of the Department of Justice (Consumer Advocate). RIITA's comments indicated that the proposed rules do not apply to its members and, therefore, RIITA had no specific comments to offer. Consumer Advocate supported the Board's proposed rules as written. Qwest and Iowa Telecom suggested a variety of revisions. Several of those suggestions, or variations of those suggestions, have been adopted by the Board including those associated with notice requirements, the length of a plan, modifications of a plan, plan requirements, potential refunds, and plan review procedures. Each of these changes will improve the flexibility of these procedural rules, so that the carriers may propose, and the Board may consider and approve, the plans that will best serve the public interest.

Qwest also suggested that the last paragraph of proposed rule 43.5 should be deleted. This proposed rule requires that carriers that opt into the Broadband Initiative must make the resulting facilities available to other carriers on a wholesale basis. Qwest asserts that this proposed rule contradicts a portion of the recent "Triennial Review Order" issued by the Federal Communications Commission (FCC) on August 21, 2003. That FCC order limits a carrier's obligation to unbundle

facilities and services for advanced telecommunications services and its obligation to make those facilities and services available at wholesale prices. The Board recognizes that this proposed rule merely repeated a statutory requirement and is therefore unnecessary. The last paragraph of proposed rule 43.5 has been deleted. Nevertheless, the Board notes that Iowa law requires that a carrier which participates in a broadband plan must make the services and facilities that result from the implementation of the plan available to other carriers on both an unbundled and wholesale basis.

Both Qwest and Iowa Telecom suggest that the proposed confidentiality rule identified as Rule 43.7 should be deleted. This proposed rule provides that carrier plans shall not be eligible for confidential treatment. Qwest supports its suggestion by stating that the statute is silent as to the issue of confidentiality and the rule, as initially proposed, would deprive carriers of their statutory right to confidentiality for trade secrets and for reports to government agencies. Iowa Telecom supports its suggestion by stating that a large part of a carrier's plan will likely contain proprietary information relating to costs, work methods, market research, and network design; so the entire plan should be deemed confidential.

The Board recognizes the concerns raised by Qwest and Iowa Telecom with respect to the sensitivity of proprietary information that may be included in a proposed plan. Therefore, the Board has amended its proposed rule 43.7 to better protect the commercially sensitive information that may be included in a plan. However, the general plan information, specifically the information regarding the exchanges where advanced telecommunications services are to be deployed, the

types of services that are to be deployed, and when those services are expected to be available to customers in those exchanges will still be made available for public inspection, in order to fulfill the unbundling and wholesale requirements of the statute.

These amendments are intended to implement 2003 Iowa Acts, Senate File 368. These amendments will become effective on February 25, 2004.

The following amendments are adopted.

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## CHAPTER 43 IOWA BROADBAND INITIATIVE

**199—43.1(476) Authority and purpose.** These rules are intended to implement Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6, relating to the Iowa broadband initiative.

The purpose of these rules is to provide guidelines for rate-regulated telecommunications carriers electing to participate in the Iowa broadband initiative and to evaluate the appropriateness of each carrier's broadband initiative revenue plan.

**199—43.2(476) Definitions.** The following words and terms, when used in this chapter, shall have the meanings shown below:

“Advanced telecommunications services,” means the telecommunications infrastructure capable of delivering a data transmission speed of at least 200 kilobits per second in both directions.

“Affordable rates” is presumed to mean the current price for advanced telecommunications services being charged for similar services in areas with multiple

broadband providers, as demonstrated by published or advertised prices. However, this presumption may be rebutted in appropriate circumstances.

“Plan” encompasses ~~24~~ 36 consecutive months of projects for the deployment of advanced telecommunications services.

“Project” means individual or logically grouped proposals for the deployment of advanced telecommunications services.

“Public interest” includes, but is not limited to, the effective deployment, at the lowest reasonable expenditure of broadband initiative revenues, of advanced telecommunications services to the public at affordable rates, and the fostering of economic development through the increased availability of advanced telecommunications services.

**199—43.3(476) Applicability.** Rate-regulated telecommunications carriers electing to participate in the Iowa broadband initiative shall file for the board’s review and approval a proposed plan for using the revenue each carrier will receive from the price increase permitted by Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6. The plan shall include economically achievable projects designed to expand advanced telecommunications services into areas of the state where advanced telecommunications services are currently unavailable. Each plan shall cover a time period not to exceed ~~24~~ 36 months.

**199—43.4(476) Procedures.** The following procedures shall govern the board’s review of broadband initiative plans:

**43.4(1)** Written notice of a broadband initiative plan. At least 30 days prior to a carrier’s implementation of the price increase permitted by Iowa Code section 476.97 as

amended by 2003 Iowa Acts, Senate File 368, section 6, and ~~P~~prior to filing its initial broadband initiative plan, but not more than 62 days prior to filing, a carrier shall provide mail or deliver a written notice of its filing intent to file a plan to all affected customers. ~~The notice shall be submitted to the board for approval not less than 30 days prior to the proposed notification of customers.~~ A copy of the notice shall also be filed with the board at the time the notice is sent to all affected customers. The notice shall, at a minimum, include the following elements:

a. The ~~actual~~ monthly price increase ~~proposed~~ to be implemented pursuant to Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6, ~~(12)"c"~~ and the ~~proposed implementation~~ date for implementation.

b. A statement that the carrier will be filing a broadband initiative plan with the board pursuant to Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6.

~~c. A brief description of the proposed broadband initiative plan and the estimated cost of the proposed plan.~~

~~d. A brief description of the board's review process.~~

~~ec.~~ The telephone numbers and addresses of carrier personnel, the board, and the consumer advocate for customers to contact with questions.

~~fd.~~ A statement describing the application of a credit, in an amount equal to the amount of the proposed residential service increase, to the monthly local exchange service rate for qualified applicants for low-income lifeline assistance programs.

A carrier shall file its broadband initiative plan within 60 days of the date that the notice is filed with the board.

**43.4(2)** ~~Approving, rejecting, or docketing~~ Plan Review Procedures. The board shall issue an order approving, rejecting, or docketing a broadband initiative plan no later than 90 days after the plan is filed with the board. ~~Supporting testimony, exhibits, and work papers shall be filed with each carrier's application for approval of a broadband initiative plan.~~ However, if the board seeks additional information from a carrier that submits a proposed plan, the 90-day period shall not commence until all such information has been filed with the board.

a. Supporting documents shall be filed with each carrier's application for approval of a broadband initiative plan.

b. Responses to a proposed plan shall be filed with the board within 10 days after the date on which the plan or any additional information sought pursuant to the preceding paragraph, is filed.

c. If the board docketed a plan for further investigation, the plan shall be docketed as a formal contested case proceeding by the board and the procedures set forth in Chapter 7 of these rules will apply.

**43.4(3)** Price increases. ~~pursuant to Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6.~~ A carrier may implement a price increase for selected classes of customers. The price increase for any particular class of residential or business customers shall be a uniform increase across the carrier's Iowa service territory unless otherwise ordered by the board. A carrier electing to participate in the broadband initiative shall file a revised tariff with the board that reflects the proposed price increase for residential or business customers, as allowed by Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6.

**43.4(4)** Interim approval. While the proposed plan is under review, the board may grant interim approval to specific projects included in the proposed plan. Projects to be considered for interim approval may include, but are not limited to, the deployment of advanced telecommunications services into areas where advanced telecommunications services are unavailable in any part of the carrier's local exchanges.

**43.4(5)** Modification of a plan. The consumer advocate, the carrier, or a third-party intervenor may propose ~~approval, modification, or rejection~~ of a carrier's plan at any time. The board, on its own motion, may consider modification of a carrier's plan. All applications to modify a plan shall be filed in the same docket in which the original plan was filed. The board shall issue an order docketing, approving, or rejecting a proposed modification within 30 days of the date the proposed modification is filed. If the board rejects or modifies a carrier's plan, the board may require the carrier to file a modified plan and may specify the minimum acceptable contents of the modified plan. A carrier may withdraw its proposed plan at any time.

a. Reasons for modifying or rejecting a plan may include, but are not limited to, the following:

(1) A demonstration that advanced telecommunications services are already available at affordable rates in a substantial portion of the area(s) where the services are proposed to be deployed;

(2) A demonstration that significant investment by a third party has been committed for the deployment of advanced telecommunications services in one or more of the areas specified in the plan, and advanced telecommunications services will be offered in those areas within a reasonable time; or

(3) A demonstration that the deployment of advanced telecommunications services in one or more of the areas specified in the plan may no longer be cost-effective.

b. The carrier shall file an application to modify its plan if any one of the following conditions occurs or is projected to occur during the life of the plan:

(1) The total plan budget has changed or will change by a factor of plus or minus ~~5~~10 percent.

(2) An approved project is proposed to be eliminated or a new project is proposed to be added.

**43.4(6)** Refunds. If a carrier withdraws its plan prior to the completion of the plan, the carrier shall refund all unspent revenues to existing customers in a manner to be approved by the board and at a rate of interest to be determined by the board, but not to exceed the interest rate allowed in Iowa Code section 476.6(13).

**199—43.5(476)** **Broadband initiative plan requirements.** A carrier's proposed plan shall include individual projects spanning ~~24~~ 36 consecutive months from the date the plan is filed and shall include ~~an overall~~ a plan for extending advanced services to all customers in the areas where the services are proposed to be deployed (if that will require more than 36 months), to the extent consistent with technological limitations and the public interest. Each project description shall include the means by which the carrier proposes to provide advanced telecommunications services to customers who currently cannot be offered such services as well as an estimate of the number of potential customers who may benefit as a result of the project. The plan shall also include a description of how the public interest will be met by the plan and a description of the geographic locations where the improvements are proposed. The plan shall

include a ranking of projects, or group of projects, depicting the order and areas in which a carrier proposes to deploy advanced telecommunications services.

~~The plan shall also include a statement whereby the carrier agrees to make available to other carriers, on both a wholesale and an unbundled basis, the services and facilities that result from the implementation of the plan. The wholesale rates and unbundled rates shall be set by the board, which shall consider, among other factors, the extent to which the service or facility was financed by the revenues generated by the rate increase allowed by Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6.~~

**43.5(1)** Description of each proposed project. The description of each proposed project shall include but not be limited to:

- a. The name of the proposed project;
- b. The exchange(s) or area(s), the total number of access lines in the exchange(s) or area(s), and the number of unserved access lines that the project targets;
- c. The proposed improvements and related costs for the project;
- d. The calculation of the total investment divided by the number of additional access lines to be served;
- e. The anticipated date(s) for the deployment of advanced telecommunications services to the exchanges specified in the project; and
- f. A narrative description of the company's reasons for proposing each particular project at the proposed priority level.

**43.5(2)** Plan and project budget categories. The plan and project budgets shall be itemized by proposed costs. Each category shall contain sufficient information to allow

the board to perform an adequate analysis of the plan. The plan and project budgets shall be categorized as follows for each proposed project:

- a. Planning and design costs;
- b. Equipment costs;
- c. Costs for the installation of the equipment; and
- d. Other project and plan costs.

**43.5(3)** Board review of proposed projects. In reviewing the proposed projects, the board shall consider all relevant factors, including but not limited to the following:

- a. Cost efficiency of deployment, which is the calculation of the total investment divided by the number of additional access lines to be served.
- b. The extent to which the carrier's proposed investments and expenditures serve the public interest, including the upgrading of existing telecommunications infrastructure to permit improved data services for customers who cannot be offered advanced telecommunications services due to their geographic locations.
- c. The availability of ~~external~~ funding sources other than the funds received pursuant to Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6, as well as external funding sources and committed investments by ~~outside-sources~~ entities other than the carrier.

The board may approve, reject, or modify the plan. For example, the board may reorganize the project priority list or deny approval of specific projects that fail to meet the public interest test. A carrier may withdraw its plan if it disagrees with the board's proposed modifications and refund all unspent revenues to existing customers in a

manner to be approved by the Board and at a rate of interest to be determined by the Board, but not to exceed the interest rate allowed in Iowa Code section 476.6(13).

**199—43.6(476) Upon completion of approved plan.**

**43.6(1)** ~~Within 60 days of~~ At the end of the 24-month period of an approved plan, a carrier shall file a final reconciliation report. The reconciliation report shall include total incremental revenues collected, total costs incurred, access lines developed, utilization of service, and pricing of services.

**43.6(2)** ~~Immediately upon completion of the plan and the filing of a reconciliation report,~~ At the same time that a carrier files a reconciliation report, a carrier shall do one or more of the following:

a. File a continuation plan for board review and approval for the continued use of the revenue resulting from the price increase allowed by Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6, for further deployment of advanced telecommunications services.

b. File a rate of return rate proceeding pursuant to Iowa Code section 476.6 to determine new rates.

c. File proposed tariffs for board review and approval to reduce the monthly prices that were adjusted pursuant to Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6, by an amount equal to the increase.

d. File a refund plan. If, after the completion of the plan, a carrier elects no longer to participate in the broadband initiative, the carrier shall refund all unspent revenues, ~~plus interest,~~ to existing customers in a manner to be approved by the board and at a rate of

interest to be approved by the board, but not to exceed the interest rate allowed in Iowa Code section 476.6(13).

**199—43.7(17A) Confidentiality.** ~~A carrier's proposed broadband initiative plan shall not be held as confidential. Supporting information describing the availability of advanced telecommunications services not funded by this initiative may be held confidential pursuant to rule 199—1.9(476). The board may request additional information from a carrier during the board's review of a plan. If the board requests additional information from a carrier, the carrier shall supply the information upon the board's request. The additional information requested may be subject to confidential treatment in accordance with rule 199—1.9(476), although plan updates, revisions, and final plans will not be granted confidential treatment. The portions of a carrier's proposed broadband initiative plan identifying the exchanges where advanced telecommunications services are to be deployed, the time frame in which those services are expected to become available in the described exchanges, and the types of services that are to be available in those exchanges, will be made available for public inspection. Supporting documents and additional information, including but not limited to market share information, cost data, vendor information, and proprietary information may be held confidential pursuant to 199—1.9(476) if an appropriate request for confidential treatment is filed. The board may request additional information from a carrier during the board's review of a plan. If the board requests additional information from a carrier, the carrier shall supply the information upon the board's request. The requested information may also be subject to confidential treatment in accordance with rule 199—1.9(476).~~

**199—43.8(476) Project reports.**

**43.8(1)** A carrier shall file a project report with the board 12 months following the board's approval of a broadband initiative plan, interim projects, or tariff for rate increase, whichever comes first, and every 12 months thereafter until a final reconciliation report is filed.

**43.8(2)** The project report shall include the following information:

- a. A statement detailing the carrier's progress toward completion of its approved plan;
- b. A statement identifying the amount of money collected pursuant to Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6;
- c. A statement identifying the carrier's expenditures for each approved project;
- d. A statement identifying the total number of access lines in the exchange(s) specified in the plan and the access lines made available for advanced telecommunications services; and
- e. A narrative statement of the reasons any particular project was not completed as described, proposed, or approved.

These rules are intended to implement Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6.

January 2, 2004

/s/ Diane Munns

Diane Munns  
Chairman